

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID A. SCHEIDMANTEL,
MICHAEL D. BICARD, and NICHOLAS J. RUNNALS

Appeal 2008-0560
Application 10/711,979
Technology Center 1700

Decided: April 29, 2008

Before CHARLES F. WARREN, CATHERINE Q. TIMM, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 1 through 19, 21 through 27, and 37 in the Office Action mailed October 23, 2006. 35 U.S.C. §§ 6 and 134(a)(2002); 37 C.F.R. § 41.31(a)(2006).

We affirm the decision of the Primary Examiner.

Claims 1 and 37, as they stand of record in the Amendment filed October 17, 2006,¹ illustrate Appellants' invention of a vehicular trim component, and are representative of the claims on appeal:

1. A vehicular trim component comprising:

a base

a cover associated with the base, wherein the cover comprises an aesthetic feature integrally formed in an uninterrupted portion of the cover and configured to simulate a seam comprising a pair of stitchings.

37. A simulated seam in a molded polymeric item comprising a cover portion, the simulated seam comprising:

a pair of ridges formed in a generally parallel fashion along an uninterrupted interior portion of the cover portion; and

an indentation formed between the ridges in the uninterrupted interior portion;

whereby the pair of ridges in cooperation with the indentation therebetween simulates a butt seam.

The Examiner relies upon the evidence in these references (Ans. 3):

Young	US 3,802,291	Apr. 9, 1974
Walter	US 4,130,623	Dec. 19, 1978
Wright	US 2003/0168151 A1	Sep. 11, 2003

Appellants request review of the following grounds of rejection advanced on appeal (App. Br. 4):²

claims 21, 23, and 37 under 35 U.S.C. § 102(b) as unpatentable over Walter (Ans. 3);

claims 1 through 3, 14, 21, 26, and 27 under 35 U.S.C. § 102(b) as unpatentable over Young (Ans. 4); and

¹ The Examiner cited the errors in claims 1 and 37 as submitted in the Claim Appendix to the Appeal Brief. Ans. 3.

² The Examiner has withdrawn the ground of rejection of claims 21 through 27 and 37 over 35 U.S.C. § 112, first paragraph, written description requirement. Ans. 3 and 6; App. Br. 4.

claims 1 through 19, 21 through 27, and 37 under 35 U.S.C. § 103(a) as unpatentable over Appellants' admitted prior art in view of Wright (Ans. 4).

Appellants argue the first ground of rejection primarily on the basis of independent claim 37; the second ground of rejection on the basis of independent claims 1 and 37; and the third ground of rejection primarily on the basis of claims 1 and 37. App. Br. in entirety. Thus, we decide this appeal based on claims 1 and 37 and on the remaining claims to the extent argued in the Appeal Brief and Reply Brief. 37 C.F.R. § 41.37(c)(1)(vii) (2006).

The issues in this appeal are whether the Examiner has carried the burden of establishing a prima facie case in each of the grounds of rejection advanced on appeal.

We consider first the grounds of rejection under § 102(b). The Examiner must establish a prima facie case of anticipation by showing, as a matter of fact, a single reference describes to one skilled in this art each and every limitation of the claimed invention encompassed by the claim arranged as required therein. *See, e.g., In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997), and cases cited therein; *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983) (anticipation is established when the claim reads on something disclosed in the reference which meets all of the limitations of the claim). When applying the prior art to the claimed invention encompassed by a claim, the terms of the claim must first be given their broadest reasonable interpretation in their ordinary usage in the context of the claim as a whole as they would be understood by one of ordinary skill in the art, in light of the written description in the Specification, including

the drawings, without reading into the claim any disclosed limitation or particular embodiment. *See, e.g., In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004), and cases cited therein; *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997).

With respect to the ground of rejection over Walter, the language of claim 37, drawn to “[a] simulated seam,” at issue is “a pair of ridges formed in general parallel fashion along an uninterrupted interior portion of the cover portion;” “an indentation formed between the ridges;” and “the pair of ridges in cooperation with the indentation therebetween simulates a butt seam.” Ans. 6; App. Br. 7-8; Reply Br. 4-6. We agree with Appellants’ contentions because, as shown in Specification Figures 6-8, regions 38, 40 are “textured or raised to simulate a slight pucker” and shown as “ridges” that extend in generally parallel fashion along an uninterrupted, that is, one piece, interior portion of the cover on each side of center seam or indentation 32. Spec. ¶¶ 35 and 36; *see also* ¶¶ 11, 12, 15, 16, 18, 19, 26-28, and 34, and Figs. 6-8. Appellants use the term “butt seam” in acknowledging the prior art and to describe the disclosed invention in the same terms used in claim 37 to define the simulated butt seam; that is, center seam 32 between two parallel side seams 34 and 36 extending along the cover in the arrangement shown in Figs. 6-8. Spec., e.g., ¶¶ 4, 15, and 35, and Figs. 1-3 and 6-8. Indeed, the term as used by Appellants is synonymous with the term “butt joint” which has the customary, dictionary meaning of “[a] joint formed by two abutting surfaces placed squarely together.”³ We further determine the term “ridge” used to describe the

³ *See, e.g., butt joint*, *The American Heritage Dictionary of The English Language* 254 (4th ed., Boston, Houghton Mifflin Company, 2000).

structures illustrated in Figure 8 comports with the common, dictionary meaning of the term in context as “[t]he horizontal line formed by the juncture of two sloping planes, especially the line formed by the surface at the top of a roof.”⁴

We agree with Appellants that Walter’s Figure 5 would not describe a simulated butt seam encompassed by claim 37 to one skilled in this art as the Examiner contends. Ans. 3 and 6; App. Br. 8; Reply Br. 6. The Examiner is of the opinion that all that is required to meet the claim is “any structure that comprises a pair of ridges and an indentation between the ridges.” Ans. 6. In this respect, the Examiner finds Figure 5 described “a series of indentations 13 that are generally parallel to the ridges.” Ans. 6. Contrary to the Examiner’s position, we find an adequate description of the structure illustrated in Walter Figure 5 in the reference: “the stitching pattern 13 produced by” the disclosed embossing method. Walter, e.g., col. 6, ll. 46-50, and cols. 3-6. We further find it would be apparent to one skilled in this art from Walter’s Figure 5, that the stitching pattern embossed in the substrate is in the form of ridges that are generally parallel in direction along an uninterrupted interior portion of the cover, and has an indentation between successive pairs of ridges only where the ridges slightly overlap. The Examiner does not explain how the structure of slightly overlapping ridges that are generally parallel in direction and an indentation only in the overlap area between the ridges illustrated in Walter’s Figure 5, *prima facie*, describes the structure of a simulated butt

⁴ See, e.g., **ridge**, *The American Heritage Dictionary of The English Language* 1498.

seam specified by the limitation in claim 37, as we interpreted this claim above, to one skilled in this art within the meaning of § 102(b).

Accordingly, in the absence of a prima facie case of anticipation of claim 37 over Walter, we reverse the ground of rejection of claims 21, 23, and 37 under 35 U.S.C. § 102(b).

Turning now to the ground of rejection of claims 1 and 37 over Young, the plain language of claim 1 specifies any manner of “trim component comprising” at least “a base” and any manner of “a cover” that is “associated” in any manner “with the base.” The “cover comprises” at least, any manner of “an aesthetic feature integrally formed in an uninterrupted portion of the cover” that is “configured to simulate” any manner of “a seam comprising” at least “a pair of” any manner of “stitchings.”

Appellants’ contentions focus on the limitation “a cover associated with the base” with respect to claim 1, and on the term “interior” with respect to claim 37. App. Br. 9-10; Reply Br. 6-8. With respect to claim 1, Appellants contend the “cover” must extend entirely over the “base” of the “trim component” with which the “cover” is “associated.” App. Br. 9-10; Reply Br. 6-8. We disagree with Appellants’ contentions.

We find no definition of the phrase “a cover associated with the base” in the Specification, and Appellants do not point out where such definition is found therein. We do find in the disclosure that the “trim component comprises the molded cover,” wherein “the cover can overlay the entire portion of the shell” or “base.” Spec. ¶ 8. This disclosure does not require that the cover “must” overlay the entire portion of the base. Thus, we find no basis in the language of claim 1 or in the disclosure in the Specification to read the limitation of the embodiment illustrated in Specification Figures

6-9A as a limitation into claim 1, as the Examiner contends. Ans. 6-7. *See, e.g., In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989). Indeed, Appellants' reliance on a dictionary definition of "cover" (Reply Br. 6) does not, on this record, provide a definitive meaning for the term "cover." Accordingly, claim 1 encompasses a trim component in which at least a part of the base is covered by the specified "cover associated" therewith.

We interpreted the terms of claim 37 to a large extent above. Here, we agree with the Examiner, and contrary to Appellants' contentions, that the plain meaning of the term "interior," in the context of the claim language, is "a pair of ridges formed in generally parallel fashion along an uninterrupted interior portion of the cover portion" relative to the structure of the "cover portion" Claim 37; Ans. 7; App. Br. 11. In other words, the ridges must be any place inside of the outer border of the cover portion. We find no disclosure in the Specification, including the figures, which requires a different definition of or otherwise places spatial limitations on this term. Indeed, the ridges are merely described and illustrated as within the borders of the cover, which disclosure comports with the common, dictionary meanings of the term as "located on the inside" and "[s]ituated away from a coast or border."⁵

We agree with the Examiner that, as a matter of fact, the steering wheel rim embodiment illustrated in Young's Figures 3 and 4, describes to one skilled in this art a vehicle trim component in which wedge 106 is "a cover" for, and thus, "associated with," the slot in the "base" rim 101, with ridge shaped portions 107, 108 along an interior portion of wedge 106

⁵ *See, e.g., interior*, *The American Heritage Dictionary of The English Language* 913.

having stitching 109 thereon. *See* Young, e.g., col. 3, ll. 19-27. Thus, prima facie, Young describes to this person a vehicular trim component and a simulated butt seam falling within claims 1 and 37, respectively, including every limitation thereof, as we construed these claims above. Ans. 4 and 6-7.

Upon reconsideration of the record as a whole in light of Appellants' contentions, we are of the opinion that Appellants have not successfully rebutted the prima facie case. We are not persuaded of error in the Examiner's position by Appellants' contention that Young refers to structure 105 as "a cover" because wedge 106 in fact covers a portion of base rim 101. App. Br. 9-10.

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of anticipation found in Young with Appellants' countervailing evidence of and argument for non-anticipation and conclude that the claimed invention encompassed by appealed claims 1 through 3, 14, 21, 26, and 27 would have been anticipated as a matter of fact under 35 U.S.C. § 102(b).

The Examiner relies on prior art acknowledged by Appellants in the ground of rejection under § 103(a). We find Appellants acknowledge it was known in the art to apply leather trim to any manner of vehicular trim component, wherein two pieces of leather 100, 102 are joined by butt seam 106, forming a continuous exterior surface with a crease at the butt seam and without visible threads. Each piece 100, 102 is further joined to itself by seams 112, 114, respectively, parallel to butt seam 106. The combination of seams 106, 112, 114 is known as "French seam" 116, in which the seams are sewn together with a sewing machine. Spec. ¶¶ 3-4 and Figs. 1-3.

Appellants further illustrate the knowledge in the art with cover 118 of pieces connected with French seams 116, applied to a rigid trim shell 120 to form a trim component 122. Spec. ¶ 5 and Figs 4A-B. Appellants acknowledge that certain hard to fit surfaces are fitted with a cover that includes “a composite component having leather and polymer surfaces.” Spec. ¶ 5 and Figs 4A-B.

Appellants acknowledge that leather “cut and sew” covers have been used which are molded faux leather polymer covers that “comprise a surface with a texture similar to leather and features resembling French stitching.” Spec. ¶ 6. In this respect, Appellants further acknowledge that

[w]hile the surface and butt seams of molded products closely resemble the corresponding aspects of “cut and sew” hand-wrapped leather products, the molded seams parallel to the butt seam have an obvious faux appearance. The absence of thread in the parallel seams is an immediate indicator that the seam is a molded French seam and, therefore, the trim component does not have a leather surface.

Spec. ¶ 6.

We agree with the Examiner’s finding (Ans. 8) that Appellants acknowledge in Specification Figure 3 that it was known in the art that a French seam 116 has a ridge on either side of butt seam crease 106, wherein the crease has invisible stitching while stitching is visible where each of pieces 100, 102 is sewn to itself. Thus, butt seam crease 106 is an indentation between the two ridges.

We find Wright would have disclosed to one of ordinary skill in this art a cover for a vehicular trim component wherein two pieces of molded polymer cover material are stitched together forming a butt seam and the resulting crease on the surface of the cover. A decorative stitching line is

stitched on each side of the butt seam. Wright, e.g., ¶¶ 0007, 0019, 0020, 0022-0024, and 0029, and Figs. 3 and 4. Wright acknowledges it was known in the art that a stitch line is used for a “‘hand-crafted’ appearance” and polymer materials can be sewn together to form a cover for a trim component. Wright ¶¶ 0003-0005.

We determine the combination of Appellants’ acknowledged state of the art and the acknowledgments and disclosure of Wright, the scope of which we determined above, provide convincing evidence supporting the Examiner’s case that the claimed invention encompassed by independent claims 1 and 37, as we interpreted these claims above, would have been *prima facie* obviousness to one of ordinary skill in the vehicular trim component arts familiar with the methods of making vehicular trim component covers for different decorative grades of vehicles.

The Examiner contends Appellants acknowledge that simulated French seam stitching for simulated leather does not include thread stitching lines in the parallel seams while Wright discloses that thread stitching in the parallel seams “fully enhance the aesthetic look of the decorative cover.” Ans. 4, 7, and 8. Thus, the Examiner determines it would have been *prima facie* obvious to one of ordinary skill in this art to use Wright’s thread stitching lines in the decorative covers Appellants acknowledge are known in the art with a reasonable expectation of upgrading the aesthetic appeal of the vehicular trim components. Ans. 4.

We agree with the Examiner. Indeed, Wright makes it clear that the acknowledged prior art in the Specification includes the knowledge that the absence of thread stitching in the parallel seams of a molded French seam detracts from its aesthetic appeal. Indeed, the knowledge of the problem of

the lower aesthetic appearance of molded stitching lines in faux leather covers in the art would have provided clear motivation to this person to solve it. *See, e.g., KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1742 (2007) (“When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp.”); *In re Nomiya*, 509 F.2d 566, 574 (CCPA 1975) (“The significance of evidence that a problem was known in the prior art is, of course, that knowledge of a problem provides a reason or motivation for workers in the art to apply their skill to its solution.”); *In re Ludwig*, 353 F.2d 241, 243 (CCPA 1965); *In re Goodman*, 339 F.2d 228, 232-33 (CCPA 1964). Thus, one of ordinary skill in this art would have been motivated to use Wright’s thread stitching lines in place of the molded stitching lines in the faux leather trim covers.

Accordingly, we are of the opinion that one of ordinary skill in this art routinely following the knowledge in the art of a problem with molded stitching lines acknowledged by Appellants and by Wright and Wright’s disclosed solution to the problem would have reasonably arrived at the claimed invention encompassed by claims 1 and 37, including all of the limitations thereof, without recourse to Appellants’ Specification. *See, e.g., KSR*, 127 S.Ct. at 1739 (2007) (a patent claiming a combination of elements known in the prior art is obvious if the improvement is no more than the predictable use of the prior art elements according to their established functions); *In re Kahn*, 441 F.3d 977, 985-88, (Fed. Cir. 2006); *Pro-Mold & Tool Co. v. Great lakes Plastics Inc.*, 75 F.3d 1568, 1573 (Fed. Cir. 1996) (“In this case, the reason to combine [the references] arose from the very

nature of the subject matter involved, the size of the card intended to be enclosed.”); *In re Gorman*, 933 F.2d 982, 986-87 (Fed. Cir. 1991) (“The extent to which such suggestion [to select elements of various teachings in order to form the claimed invention] must be explicit in, or may be fairly inferred from, the references, is decided on the facts of each case, in light of the prior art and its relationship to the applicant’s invention.”); *In re Keller*, 642 F.2d 413 (CCPA 1981)(“[T]he test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”); *In re Sovish*, 769 F.2d 738, 743 (Fed. Cir. 1985) (skill is presumed on the part of one of ordinary skill in the art); *In re Bozek*, 416 F.2d 1385, 1390 (CCPA 1969)(“Having established that this knowledge was in the art, the examiner could then properly rely, as put forth by the solicitor, on a conclusion of obviousness ‘from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference.’”); *see also In re O’Farrell*, 853 F.2d 894, 903-04, (Fed. Cir. 1988) (“For obviousness under § 103, all that is required is a reasonable expectation of success.” (citations omitted)).

Upon reconsideration of the record as a whole in light of Appellants’ contentions, we are of the opinion that Appellants have not successfully rebutted the prima facie case of obviousness. The Examiner can and does rely on all of the prior art acknowledged by Appellants in the Specification which includes figures labeled “prior art.” Ans. 7-8. *See Nomiya*, 509 F.2d at 570-71, 571 n.5 (“We see no reason why appellants’ representations in their application should not be accepted at face value as admissions that Figs. 1 and 2 may be considered “prior art” for any purpose, including use as evidence of obviousness under § 103. By filing an application containing

Figs. 1 and 2, labeled prior art, *ipsissimis verbis*, and statements explanatory thereof, appellants have conceded what is to be considered as prior art in determining obviousness of their improvement.” (citations omitted)).

Appellants contend the acknowledged prior art does not indicate “that prior art molded covers are uninterrupted.” Reply Br. 9. In other words, Appellants argue it is not apparent from the description of the prior art in the Specification whether the prior art molded covers have at least one piece that includes a butt seam as claimed in claims 1 and 37, or by combining separate pieces of molded material to form a butt seam as disclosed by Wright. On this record, we disagree. Indeed, Appellants acknowledge “[m]olds for faux leather trim covers comprise a surface with a texture similar to leather and features resembling French stitching.” Spec. ¶ 6. In our view, this disclosure would describe to one of ordinary skill in this art a molded trim cover that contains a molded butt seam in at least one “uninterrupted portion” thereof as this term is used in the claims.

We further cannot agree with Appellants’ contentions that one of ordinary skill in this art would not be motivated to combine the knowledge in the prior art as acknowledged by Appellants and Wright. App. Br. 15-16. Indeed, one of ordinary skill in this art would have readily observed the “obvious faux appearance” of the molded French stitching, as Appellants and Wright acknowledge, and thus, would have been led to combine the knowledge in the art with the teachings of Wright to address the known problem.

Appellants further contend that the applied prior art does not teach or suggest all of the claim limitations. With respect to Appellants’ contentions concerning claims 1, 4, 10, and 37, we agree with the Examiner that the

stitch lines of a molded uninterrupted trim cover portion having simulated French stitching is described in the acknowledged prior art in the Specification. Ans. 8; App. Br. 16-17 and 21. We further agree with the Examiner that contrary to Appellants' contentions with respect to the limitations defining seams in claims 2, 3, 5, 11, 21, 22, 23, and 25, "French seam" stitching and structure was known in the art, to which we add that Appellants acknowledge known molded trim covers with "features resembling French stitching." Ans. 5 and 8; App. Br. 17-18, 21-23, and 23-24. We also agree with the Examiner that contrary to Appellants' contentions with respect to the limitations defining of claims 6, 7, 12, 13, and 24, the location of French seams at a non-planar angle formed by a first and second surface was known in the art as Appellants acknowledge in Specification Figure 4A. Ans. 5 and 9; App. Br. 18-19, and 23. We also agree with the Examiner that contrary to Appellants' contentions, the limitations of claims 16 through 19 specify vehicular trim components well known in the prior art as Appellants' acknowledge. Ans. 4-5 and 9; App. Br. 20-21. We also agree with the Examiner that contrary to Appellants' contentions with respect to the limitations with respect to a simulated texture, such as a leather grain appearance, on the molded trim cover, of claims 8, 9, 14, 15, 26, and 27, it would have been within the ordinary skill in the art to provide a "faux leather" appearance on the molded cover which Appellants acknowledge was known in the art. Ans. 9; App. Br. 19-20 and 24-25.

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combination of Appellants' admitted prior art and Wright with Appellants'

Appeal 2008-0560
Application 10/711,979

countervailing evidence of and argument for nonobviousness and conclude that the claimed invention encompassed by appealed claims 1 through 19, 21 through 27, and 37 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

PL Initial:
sld

MCGARRY BAIR PC
32 MARKET AVE. SW
SUITE 500
GRAND RAPIDS, MI 49503